

§ 402.41

on the best scientific and commercial data available.

(c) *FIFRA action* is an action by EPA to approve, permit or authorize the sale, distribution or use of a pesticide under sections 136–136y of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 *et seq.* (FIFRA). In any consultation under this subpart, EPA shall determine the nature and scope of a FIFRA action.

(d) *Listed species* is a species listed as endangered or threatened under section 4 of the Act.

(e) *Partial biological opinion* is the document provided under § 402.47(a), pending the conclusion of consultation under § 402.47(b), stating the opinion of the Service as to whether or not a FIFRA action is likely to jeopardize the continued existence of one or more listed species or result in the destruction or adverse modification of one or more critical habitats, and describing the impact of any anticipated incidental taking of such listed species resulting from the FIFRA action, reasonable and prudent measures considered necessary or appropriate to minimize such impact, and terms and conditions necessary to implement such measures.

(f) *Service Director* refers to the Director of the U.S. Fish and Wildlife Service or the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration.

(g) *Service Representative* is the person or persons designated to participate in advance coordination as provided in this subpart.

§ 402.41 Purpose.

The purpose of these counterpart regulations is to enhance the efficiency and effectiveness of the existing consultation process under section 7 of the Endangered Species Act (Act), 16 U.S.C. 1531 *et seq.*, by providing Fish and Wildlife Service and the National Marine Fisheries Service (referred to jointly as “Services” and individually as “Service”) and EPA with additional means to satisfy the requirements of section 7(a)(2) of the Act for certain regulatory actions under FIFRA. These additional means will permit the Services and EPA to more effectively use the scientific and commercial data generated through the FIFRA regulatory process

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as part of the best scientific and commercial data available to protect listed species and critical habitat. The procedures authorized by these counterpart regulations will be as protective of listed species and critical habitat as the process established in subpart B of this part.

§ 402.42 Scope and applicability.

(a) *Available consultation procedures.* This subpart describes consultation procedures available to EPA to satisfy the obligations of section 7(a)(2) of the Act in addition to those in subpart B of this part for FIFRA actions authorized, funded, or carried out by EPA in which EPA has discretionary Federal involvement or control. EPA retains discretion to initiate early, informal, or formal consultation as described in §§ 402.11, 402.13, and 402.14 for any FIFRA action. The procedures in this subpart may be employed for FIFRA actions as follows:

(1) Interagency exchanges of information under § 402.43 and advance coordination under § 402.44 are available for any FIFRA action.

(2) Alternative consultation under § 402.45 is available for a listed species or critical habitat if EPA determines the FIFRA action is not likely to adversely affect the listed species or critical habitat.

(3) Optional formal consultation under § 402.46 is available for any FIFRA action with respect to any listed species or critical habitat.

(4) The special procedures in § 402.47 are available for consultations on FIFRA actions that will be unusually complex due to factors such as the geographic area or number of species that may be affected by the action.

(5) EPA shall engage in consultation as to all listed species and critical habitat that may be affected by a FIFRA action, and may in its discretion employ more than one of the available consultation procedures for a FIFRA action that may affect more than one listed species or critical habitat.

(6) EPA shall engage in consultation on actions involving requests for emergency exemptions under section 18 of FIFRA that may affect listed species or critical habitat, and may choose to